

**IN THE COURT OF APPEALS OF OHIO
THIRD APPELLATE DISTRICT
MARION COUNTY**

IN RE:

DENNIS D. REED,

[STATE OF OHIO - APPELLANT].

CASE NO. 9-14-44

OPINION

**Appeal from Marion County Common Pleas Court
Trial Court No. 14 MS 0024**

Judgment Affirmed

Date of Decision: July 6, 2015

APPEARANCES:

***Denise M. Martin* for Appellant**

ROGERS, P.J.

{¶1} Plaintiff-Appellant, the State of Ohio, appeals the judgment of the Court of Common Pleas of Marion County relieving Applicant-Appellee, Dennis Reed, of disability pursuant to R.C. 2923.14. On appeal, the State argues that the trial court erred by relieving Reed of disability pursuant to R.C. 2923.14 because R.C. 2923.14 was not the proper statutory remedy applicable to Reed. For the following reasons, we affirm the judgment of the trial court.

{¶2} On July 16, 2014, Reed filed an application for relief from disability pursuant to R.C. 2923.14. In his application, Reed argued that he was not under a disability, as defined in R.C. 2923.13, but was nonetheless unable to obtain a concealed carry permit due to prior felony convictions. Specifically, Reed stated that he has two prior felony convictions: one for breaking and entering; and one for welfare theft.¹ Given the language of R.C. 2923.125, the sheriff reviewing Reed's application would have to deny it based on these convictions. A hearing was held on Reed's application on October 6, 2014.²

{¶3} In its judgment entry, filed on October 23, 2014, the trial court granted Reed's application. The entry noted that the State did not oppose Reed's application. (Docket No. 4, p. 1). The trial court found that Reed had two prior

¹ On February 15, 1978, Reed was convicted of breaking and entering in the Common Pleas Court of Marion County in case no. 77CR203. On October 6, 1983, Reed was convicted of welfare theft in the Common Pleas Court of Marion County in case no. 83CR133.

² We note that the State failed to provide this court with a transcript of the hearing, thus we must presume regularity in the trial court's proceedings. *State v. West*, 3d Dist. Auglaize No. 2-06-04, 2006-Ohio-5834, ¶ 53.

nonviolent felony convictions. The court found that under the current version of R.C. 2923.13, Reed was not under a “disability” for the purposes of that statute.

{¶4} However, the court found that a conflict existed between R.C. 2923.13 and 2923.125. In the latter, Reed would be barred from carrying a firearm in a concealed fashion. Thus, the trial court found that Reed was under a disability pursuant to R.C. 2923.125. The court noted that

[w]hile it would not be inconsistent for the Legislature to impose a stricter requirement for obtaining a concealed carry permit than it does to openly carry a firearm, it would be inconsistent to permit a person with a conviction for a felony offense of violence to obtain relief from disability and a concealed carry permit while a person with only a nonviolent felony conviction would be prohibited from obtaining a permit.

Id. at 4.

{¶5} The court then discussed the requirements to apply for relief from disability and how the relief statute restores all civil firearm rights to the full extent enjoyed by any citizen. Thus, because the statute includes “all civil firearm rights,” the court found that R.C. 2923.14 was an available remedy to Reed. The court concluded by finding that given the conflict between R.C. 2923.13 and 2923.125, R.C. 2923.14 must be interpreted to allow people convicted of nonviolent felonies to seek the same remedy as those convicted of violent felonies. Therefore, the court granted Reed’s application for relief.

{¶6} The State filed this timely appeal, presenting the following assignment of error for our review.

Assignment of Error

THE TRIAL COURT ERRED AS A MATTER OF LAW WHEN IT RELIEVED THE APPLICANT OF DISABILITY PURSUANT TO R.C. 2923.14 AND ALLOWED FOR APPLICANT TO APPLY FOR AND OBTAIN A CARRY CONCEAL PERMIT PURSUANT TO R.C. 2923.125.

{¶7} In its sole assignment of error, the State argues that the trial court erred by granting Reed’s application for relief from disability. Specifically, the State argues that Reed, a person with two nonviolent felony convictions, cannot seek relief from R.C. 2923.14 since he is not under “disability” pursuant to R.C. 2923.13. We disagree.

{¶8} Initially, we note that the State did not raise the issue that Reed was barred from seeking relief from disability under R.C. 2923.14 at the hearing. (Docket No. 8 p. 1). As such, it has waived all but plain error regarding this issue. *See Shanklin v. Lowman*, 3d Dist. Logan No. 8-10-07, 2011-Ohio-255, ¶ 40.

{¶9} By its very language, R.C. 2923.14 is civil in nature. *See* R.C. 2923.14. Although it is located in the criminal section of the Ohio Revised Code, it merely provides an avenue for a person to have his or her civil firearm rights restored.

{¶10} In civil matters, “ ‘the plain error doctrine is not favored and may be applied only in the extremely rare case * * * where error, to which no objection was made at the trial court, seriously affects the basic fairness, integrity, or public reputation of the judicial process, thereby challenging the legitimacy of the underlying judicial process itself.’ ” *Ordean v. Ordean*, 3d Dist. Shelby No. 17-06-15, 2007-Ohio-3979, ¶ 14, quoting *Goldfuss v. Davidson*, 79 Ohio St.3d 116 (1997), syllabus.

{¶11} On appeal, the State has failed to offer any argument that plain error existed. It does not explain how the trial court’s decision affected the basic fairness, integrity, or public reputation of the judicial process. Nor does it explain how this is an example of an extremely rare case that challenges the legitimacy of our judicial process. The only argument the State put forth in its brief was that R.C. 2923.125 provides the mechanism for how Reed can obtain a concealed carry permit.

{¶12} R.C. 2923.14 states, in relevant part, “Any person who is *prohibited from* acquiring, having, *carrying*, or using firearms may apply to the court of common pleas in the county in which the person resides for relief from such prohibition.” (Emphasis added.) Further, R.C. 2923.14(F) reads, “Relief from disability granted pursuant to this section *restores the applicant to all civil firearm rights to the full extent enjoyed by any citizen * * * [.]*” (Emphasis added.)

{¶13} “In construing statutes, we must read words and phrases in context and construe them in accordance with rules of grammar and common usage.” *Kimber v. Davis*, 10th Dist. Franklin No. 12AP–888, 2013-Ohio-1872, ¶ 12, citing *State ex rel. Russell v. Thornton*, 111 Ohio St.3d 409, 2006-Ohio-5858, ¶ 11. Further, it is the duty of this court “to give effect to the words used in a statute, not to insert words not used.” *State v. S.R.*, 63 Ohio St.3d 590, 595 (1992), citing *Cleveland Elec. Illum. Co. v. City of Cleveland*, 37 Ohio St.3d 50 (1988), paragraph three of the syllabus. If a statute’s language is clear and unambiguous, the court must apply the statute as written. *Cheap Escape Co., Inc. v. Haddox, L.L.C.*, 120 Ohio St.3d 493, 2008-Ohio-6323, ¶ 9.

{¶14} R.C. 2923.14 is unambiguous, and thus, we must give effect to its plain meaning. *See Slingsluff v. Weaver*, 66 Ohio St. 621 (1902), paragraph two of the syllabus. Here, Reed is prohibited from carrying a firearm that is concealed. R.C. 2923.14 is quite clear that “[a]ny person who is prohibited from * * * carrying * * * firearms” may seek relief under the statute. Since R.C. 2923.14 provides relief for a person who cannot carry a concealed firearm, it is a mechanism available for Reed and those similarly situated.

{¶15} Moreover, the former R.C. 2923.14 included language that allowed only persons subject to disability under R.C. 2923.13 to apply for relief from disability. However, in 2011, the General Assembly amended R.C. 2923.14 and

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removed the language which limited the right to apply for relief from disability. The current version of R.C. 2923.14 has not changed since the 2011 amendment. In drafting R.C. 2923.14, the General Assembly has placed confidence in the discretion of the trial court judge in granting relief from disability

{¶16} Finally, although this court agrees with the trial court's ultimate decision, we find no basis for the trial court's statutory interpretation of R.C. 2923.13 and 2923.125. Since the language of R.C. 2923.14 was clear and unequivocal, there was no need to dive into a discussion involving the other two statutes. All of the trial court's statutory interpretation outside of R.C. 2923.14 should be disregarded from future consideration.

{¶17} Accordingly, we overrule the State's sole assignment of error.

{¶18} Having found no error prejudicial to the State in the particulars assigned or argued, we affirm the judgment of the trial court.

Judgment Affirmed

WILLAMOWSKI, J., concurs.

SHAW, J., concurs in Judgment Only.

/jlr